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AUG 15 2008

In re Application of	:	
Yao, et al.	:	
Application No. 10/663,619	:	ON PETITION
Filed: September 16, 2003	:	
Attorney Docket No. 1941.014US1	:	
For: NEUROPROTECTIVE SPIROSTENOL	:	
PHARMACEUTICAL COMPOSITIONS	:	

This decision is mailed in response to the petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application, filed May 22, 2007.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to properly reply to the October 19, 2004 Notice to File Missing Parts of Nonprovisional Application, which set a two month extendable period for reply. The Notice required applicants to submit an executed declaration and a \$65.00 surcharge. Applicants obtained a one month extension of time and paid the \$65.00 surcharge and a \$130.00 processing and retention fee on January 10, 2005 (certificate of mailing date January 7, 2005). The application became abandoned on January 20, 2005. A Notice of Abandonment was mailed on May 4, 2007. The Notice of Abandonment stated that the application became abandoned because the retention fee practice had been eliminated.

Petitioners request withdrawal of the holding of abandonment because the retention fee practice was not eliminated until July 1, 2005 and applicants paid their retention fee on certificate of mailing date January 7, 2005.

Petitioners are informed that the processing and retention fee practice was meant to stand in for failure to pay the basic filing fee. If the basic filing fee or the retention fee was not paid, the application would be disposed of. Section 601.01(a) MPEP 8th edition, Revision 2, May 2004. Payment of the processing and retention fee was not meant to stand in for failure to submit an

executed declaration. The application did become abandoned on January 20, 2005 for failure to submit an executed declaration.

Applicants stated on certificate of mailing date January 7, 2005 that they filed the processing and retention fee in the present application in order to claim benefit of it in a continuing application. Application No. 11/031,538 was filed on January 7, 2005 and contains a claim for benefit of the present application. The present application did not become abandoned until January 20, 2005. Thus, applicants have achieved their underlying goal.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

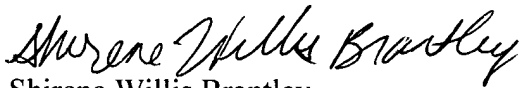
Further correspondence with respect to this matter should be addressed as follows:

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